

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Robert B. Harkness and Philip A.
Harkness
Application No. 09/255,107

Art Unit: 1661

Filed: February 22, 1999

For: CLIMBER ROSE PLANT NAMED HARYUP

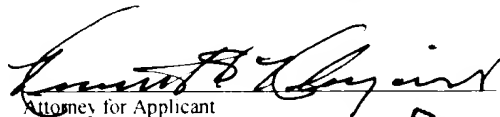
Examiner: Howard J. Locker

Date: November 13, 2002

COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

CERTIFICATE OF MAILING

I hereby certify that this paper and the documents referred to as being attached or enclosed herewith are being deposited with the United States Postal Service on November 13, 2002 as First Class Mail in an envelope addressed to: COMMISSIONER FOR PATENTS, WASHINGTON, D.C. 20231.

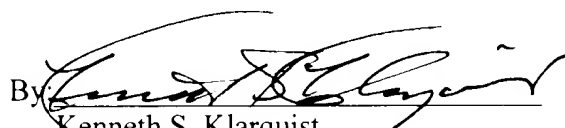

Attorney for Applicant

CORRECTION TO APPELLANT'S (sic) APPEAL BRIEF

In Appellants' Appeal Brief at page 19, it was argued that in contrast to *Thomson* "there was no evidence of commercial availability in the relied upon publications." This may have been an erroneous statement in that in one or more countries in which applications for plant breeder's rights protection have been filed, publications may have occurred in which the date of first sale of the rose of the application may have been included. Such publication would not change the basic fact that the Thomson decision is not in accordance with the law.

Respectfully submitted,

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